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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,059	12/02/2003	Jonathan W. Conaway	ECI06-GN011	2636
30074	7590	09/23/2005	EXAMINER	
TAFT, STETTINIUS & HOLLISTER LLP SUITE 1800 425 WALNUT STREET CINCINNATI, OH 45202-3957			NGO, LIEN M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/726,059

Applicant(s)

CONAWAY, JONATHAN W.

Examiner

LIEN TM NGO

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Russell et al. (6,050,433). Russell discloses, in figs. 3-5, a closure comprising a cap 2 having an orifice 28, a channel 11&16 being adapted to receive a sliding member 6 therein; a flexible conduit 20, wherein the sliding member is operative to position the flexible conduit between an open position and a closed position, and at least a portion of flexible conduit is located within the channel (a trench 16) in the closed position (see fig. 3); the flexible conduit including a molded retention structure 23; the trench including a dam 17 operative to discontinue fluid communication with the beverage in the closed position; the trench running parallel to the channel and parallel to a range of movement to the sliding member (see fig. 5); the sliding member being substantially radially recessed within the channel (see fig. 5), and having at least one fin 15 received within at least one guide groove 11.

In regard to claims 12-13 and 15, the closure of Russell et al. is capable for using of a container as claimed.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saklad (5,150,815) in view of the disclosure of the present application or Williams (6,718,664). Saklad discloses a closure comprising limitations substantially as claimed, except Saklad does not disclose a cup comprising a lenticular image. In the specification of the present invention, page 6, paragraph [0026] sets forth that the methods of forming lenticular or other images are well known in the art. And Williams teaches lenticular images forming on a beverage container. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the image in the Saklad with lenticular images, as taught by the present application disclosure or Williams, in order to enhance the aesthetics of the container.

4. Claims 12, 15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. and Saklad in view of the disclosure of the present application or Williams.

Russell et al. disclose a closure for a container substantially as claimed.

Saklad in view of the disclosure of the present application or Williams teach a lenticular-image container as claimed.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make a container having a cup with a lenticular images, and a closure as claimed, as taught by over Russell et al. in view of the disclosure of the present application or Williams, in order to form a beverage container having an actuator cover for a straw.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. and Saklad in view of the disclosure of the present application or Williams and further in view of Otake (Des. 431,150).

A container with concentric gripping rings is well known in the art, for example, Otake teaches a container with concentric gripping rings. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Russell et al. and Saklad in view of the disclosure of the present application or Williams with concentric gripping rings in order to facilitate of handling of the container.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. in view of Goto et al. (Des.363, 414). A cap with gripping aid features is well known in the art, for example, Goto teaches a cap with gripping aid features. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Russell with gripping aid features in order to facilitated of closing and opening of the cap.

7. Claim 6 has been withdrawn from allowable subject matter by the new ground rejection above.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NATHAN NEWHOUSE can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3727

Application/Control Number: 10/726,059  
Art Unit: 3727

Page 6

LIEN TM NGO  
Primary Examiner  
Art Unit 3727

September 20, 2005

A handwritten signature in black ink, appearing to read "Lien TM Ngo", with a long horizontal stroke extending to the left.